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MHRP IV L.P.  
Merlone/Hagenbuch IV

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CONNIE ARNOLD,

Plaintiff,  
v.

ROSS STORES, INC.; CODDING  
ENTERPRISES; HUGH B. CODDING;  
CODDING INVESTMENTS, INC.; NELLIE  
CODDING 1991 TRUST; M & H REALTY  
PARTNERS IV LP; MHRP IV L.P.; AND  
MERLONE/HAGENBUCH IV. INC.; AND  
DOES 5-5000, INCLUSIVE,

Defendants.

No. C02-2567 VRW

DEFENDANTS M&H REALTY  
PARTNERS IV LP, MHRP IV L.P.,  
AND MERLONE/HAGENBUCH IV,  
INC.'S ANSWER TO PLAINTIFF'S  
FIRST AMENDED COMPLAINT FOR  
INJUNCTIVE RELIEF AND  
DAMAGES

Defendants M & H Realty Partners IV LP, MHRP IV L.P., and  
Merlone/Hagenbuch IV. Inc. (collectively "Defendants"), answer Plaintiff Connie Arnold's  
("Plaintiff") First Amended Complaint as follows:

**INTRODUCTION**

1. Answering paragraph 1 of the Complaint, with respect to those allegations  
in paragraph 1 regarding Plaintiff's alleged disabilities, Defendants are without knowledge or  
information sufficient to form a belief as to the truth or falsity of those allegations and on that

DEFENDANTS M&H REALTY PARTNERS, ET AL.'S ANSWER TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES (C02-2567 VRW)

1 basis deny each and every such allegation in paragraph 1. Except as expressly admitted or  
 2 denied, Defendants deny each and every allegation in paragraph 1 of the Complaint.

3           2.       Answering paragraph 2 of the Complaint, Defendants are without  
 4 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations  
 5 regarding the size of the Ross stores. Defendants admit that Plaintiff purports to bring this  
 6 lawsuit to require Defendant to modify its facilities but denies that any such modifications are  
 7 necessary or required. With respect to those allegations in paragraph 2 that purport to require a  
 8 legal conclusion, Defendants aver that no response is required. Except as expressly admitted,  
 9 denied or averred, Defendants deny each and every allegation in paragraph 2 of the Complaint.

10           3.       Answering paragraph 3 of the Complaint, Defendants admit that Plaintiff  
 11 purports to bring this lawsuit to require Defendant to modify its facilities and to recover damages  
 12 but denies that any such modifications or damages are necessary or required. With respect to  
 13 those allegations in paragraph 3 of the Complaint that purport to set forth legal standards and/or  
 14 requirements, Defendants aver that the text of the law speaks for itself such that no response is  
 15 required to those allegations. With respect to those allegations in paragraph 3 that purport to  
 16 require a legal conclusion, Defendants aver that no response is required. Except as expressly  
 17 admitted, denied or averred, Defendants deny each and every allegation in paragraph 3 of the  
 18 Complaint.

### 19                                   **JURISDICTION AND VENUE**

20           4.       Answering paragraph 4 of the Complaint, Defendants admit that this Court  
 21 has subject matter jurisdiction over this action for claims allegedly arising under the Americans  
 22 With Disabilities Act of 1990, 42 U.S.C. §§ 12101, *et seq.* Defendants also admit that this Court  
 23 has pendent jurisdiction over Plaintiff's state law claims. Except as expressly admitted,  
 24 Defendants deny each and every allegation in paragraph 4 of the Complaint.

25           5.       Answering paragraph 5 of the Complaint, Defendants admit that venue is  
 26 proper within this Court pursuant to 28 U.S.C. § 1391(b). Defendants further admit that a

portion of Plaintiff's alleged claims arose in the Northern District of California. Except as expressly admitted, Defendants deny each and every allegation in paragraph 5 of the Complaint.

6. Answering paragraph 6 of the Complaint, Defendants admit that this action should be assigned to the San Francisco intradistrict as the principal real property that is the subject of the action is located in the San Francisco intradistrict. Except as expressly admitted, Defendants deny each and every allegation in paragraph 6 of the Complaint.

## PARTIES

7. Answering paragraph 7 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding Plaintiff's alleged disabilities and on that basis deny each and every such allegation in paragraph 7. Defendants admit that M & H Realty Partners IV LP lease the premises located at 3303 So. Mooney Blvd., Visalia, California to Defendant Ross Stores. Except as expressly admitted or denied, Defendants deny each and every allegation in paragraph 7 of the Complaint.

8. Answering paragraph 8 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding the identity of the owner of the Sonoma property and on that basis deny each and every such allegation in paragraph 8. Except as expressly denied, Defendants deny each and every allegation in paragraph 8 of the Complaint.

9. Answering paragraph 9 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding the identity of the owner of the Sonoma property and on that basis deny each and every such allegation in paragraph 9. Except as expressly denied, Defendants deny each and every allegation in paragraph 9 of the Complaint.

10. Answering paragraph 10 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding the identity of the owner of the Sonoma property and on that basis deny each and

every such allegation in paragraph 10. Except as expressly denied, Defendants deny each and every allegation in paragraph 10 of the Complaint.

11. Answering paragraph 11 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding the identity of the owner of the Sonoma property and on that basis deny each and every such allegation in paragraph 11. Except as expressly denied, Defendants deny each and every allegation in paragraph 11 of the Complaint.

12. Answering paragraph 12 of the Complaint, Defendants M & H Realty Partners IV LP lease the premises located at 3303 So. Mooney Blvd., Visalia, California to Defendant Ross Stores. Except as expressly admitted, Defendants deny each and every allegation in paragraph 12 of the Complaint.

13. Answering paragraph 13 of the Complaint, Defendants admit that M & H Realty Partners IV LP lease the premises located at 3303 So. Mooney Blvd., Visalia, California to Defendant Ross Stores. Except as expressly admitted, Defendants deny each and every allegation in paragraph 13 of the Complaint.

14. Answering paragraph 14 of the Complaint, Defendants admit that the subject Ross Store in Visalia is open to public use. With respect to those allegations in paragraph 14 of the Complaint that purport to require a legal conclusion, no answer is required. Except as expressly averred, admitted or denied, Defendants deny each and every allegation in paragraph 14 of the Complaint.

### **FACTUAL STATEMENT**

15. With respect to those allegations in paragraph 15 of the Complaint that purport to set forth legal standards and/or requirements, Defendants aver that the text of the law speaks for itself such that no response is required to those allegations. Except as expressly averred, Defendants deny each and every allegation in paragraph 15 of the Complaint.

///

1                   16.     Answering paragraph 16 of the Complaint, Defendants are without  
 2 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations  
 3 regarding whether the facilities have undergone construction or alterations since 1970. With  
 4 respect to those allegations in paragraph 16 of the Complaint that purport to set forth legal  
 5 standards and/or requirements, Defendants aver that the text of the law speaks for itself such that  
 6 no response is required to those allegations. Except as expressly admitted or averred, Defendants  
 7 deny each and every allegation in paragraph 16 of the Complaint.

8                   17.     Answering paragraph 17 of the Complaint, with respect to those  
 9 allegations regarding Plaintiff being a frequent customer and Plaintiff's alleged complaints,  
 10 Defendants are without knowledge or information sufficient to form a belief as to the truth or  
 11 falsity of those allegations and on that basis deny each and every such allegation in paragraph 17.  
 12 Except as expressly admitted or denied, Defendants deny each and every allegation in paragraph  
 13 17 of the Complaint.

14                   18.     Answering paragraph 18 of the Complaint, Defendants are without  
 15 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations  
 16 regarding whether Plaintiff visited the Ross Store at 3303 So. Mooney Blvd. in Visalia on May  
 17 28, 2001, March 10, 2002, and May 13, 2002. Except as expressly admitted or denied,  
 18 Defendants deny each and every allegation in paragraph 18 of the Complaint.

19                   19.     Answering paragraph 19 of the Complaint, Defendants are without  
 20 knowledge or information sufficient to form a belief as to the truth or falsity of allegations  
 21 concerning the Sonoma property and on that basis deny each and every such allegation in  
 22 paragraph 19. Except as expressly admitted or denied, Defendants deny each and every  
 23 allegation in paragraph 19 of the Complaint.

24                   20.     Defendants deny each and every allegation in paragraph 20 of the  
 25 Complaint.

26     ///

21. Answering paragraph 21 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of allegations concerning the Sonoma property and on that basis deny each and every such allegation in paragraph 21. Except as expressly denied, Defendants deny each and every allegation in paragraph 21 of the Complaint.

22. Defendants deny each and every allegation in paragraph 22 of the Complaint.

23. Defendants deny each and every allegation in paragraph 23 of the Complaint.

24. With respect to those allegations in paragraph 24 of the Complaint that purport to set forth legal standards and/or requirements, Defendants aver that the text of the law speaks for itself such that no response is required to those allegations. Except as expressly averred, Defendants deny each and every allegation in paragraph 24 of the Complaint.

25. With respect to those allegations in paragraph 25 of the Complaint that purport to set forth legal standards and/or requirements, Defendants aver that the text of the law speaks for itself such that no response is required to those allegations. Except as expressly averred, Defendants deny each and every allegation in paragraph 25 of the Complaint.

26. With respect to those allegations in paragraph 26 of the Complaint that purport to set forth legal standards and/or requirements, Defendants aver that the text of the law speaks for itself such that no response is required to those allegations. Except as expressly averred, Defendants deny each and every allegation in paragraph 26 of the Complaint.

**FIRST CAUSE OF ACTION:  
BREACH OF STATUTORY PROTECTIONS FOR PHYSICALLY DISABLED  
PERSONS**

27. Defendants incorporate by reference their responses to paragraphs 1 through 26 of the Complaint as if set forth here in full.

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1                   28.     Answering paragraph 28 of the Complaint, Defendants are without  
2 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations  
3 regarding Plaintiff's alleged disabilities and on that basis deny each and every such allegation in  
4 paragraph 28. With respect to those allegations in paragraph 28 that purport to set forth legal  
5 standards and/or requirements, Defendants aver that no response is required. Except as expressly  
6 admitted, denied or averred, Defendants deny each and every allegation in paragraph 28 of the  
7 Complaint.

8                   29.     Answering paragraph 29 of the Complaint, Defendants aver that the text of  
9 the law speaks for itself such that no response is required. Except as expressly averred,  
10 Defendants deny each and every allegation in paragraph 29 of the Complaint.

11                  30.     Answering paragraph 30 of the Complaint, Defendants aver that the text of  
12 the law speaks for itself such that no response is required. Except as expressly averred,  
13 Defendants deny each and every allegation in paragraph 30 of the Complaint.

14                  31.     With respect to those allegations in paragraph 31 of the Complaint that  
15 purport to set forth legal standards and/or requirements, Defendants aver that the text of the law  
16 speaks for itself such that no response is required to those allegations. Defendants are without  
17 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations  
18 regarding whether the facilities have undergone construction or alterations since 1970. Except as  
19 expressly admitted, denied, or averred, Defendants deny each and every allegation in  
20 paragraph 31 of the Complaint.

21                  32.     With respect to those allegations in paragraph 32 of the Complaint that  
22 purport to set forth legal standards and/or requirements, Defendants aver that the text of the law  
23 speaks for itself such that no response is required to those allegations. Defendants are without  
24 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations  
25 regarding whether the facilities have undergone construction or alterations since 1982. Except as  
26 expressly admitted, denied or averred, Defendants deny each and every allegation in

1 paragraph 32 of the Complaint.

2 33. With respect to those allegations in paragraph 33 of the Complaint that  
3 purport to set forth legal standards and/or requirements, Defendants aver that the text of the law  
4 speaks for itself such that no response is required to those allegations. Defendants admit that M  
5 & H Realty Partners IV LP lease the premises located at 3303 So. Mooney Blvd., Visalia,  
6 California to Defendant Ross Stores. Except as expressly admitted, denied or averred,  
7 Defendants deny each and every allegation in paragraph 33 of the Complaint.

8 34. With respect to those allegations in paragraph 34 of the Complaint that  
9 purport to set forth legal standards and/or requirements, Defendants aver that the text of the law  
10 speaks for itself such that no response is required to those allegations. Except as expressly  
11 averred, Defendants deny each and every allegation in paragraph 34 of the Complaint.

12 35. Defendants deny each and every allegation in paragraph 35 of the  
13 Complaint.

14 36. Answering paragraph 36 of the Complaint, Defendants admit that Plaintiff  
15 purports to seek injunctive relief but deny committing any violations that would entitle her to  
16 such relief. Except as expressly admitted or denied, Defendants deny each and every allegation  
17 in paragraph 36 of the Complaint.

18 37. Answering paragraph 37 of the Complaint, Defendants admit that Plaintiff  
19 purports to seek reasonable attorneys' fees, litigation expenses and costs but deny committing  
20 any violations that would entitle her to such relief. Except as expressly admitted or denied,  
21 Defendants deny each and every allegation in paragraph 37 of the Complaint.

22  
23 **SECOND CAUSE OF ACTION:**  
24 **VIOLATION OF DISABLED RIGHTS ACT,**  
**CIVIL CODE Sections 54, 54.1, 54.3 ET SEQ.**  
25 **DENIAL OF FULL AND EQUAL ACCESS TO A PHYSICALLY DISABLED PERSON**

26 38. Defendants incorporate by reference their responses to paragraphs 1  
through 37 of the Complaint as if set forth here in full.



1                   39.     With respect to those allegations in paragraph 39 regarding California  
2 Civil Code §§ 54 and 54.1, Defendants aver that the text of the law speaks for itself such that no  
3 response is required. Except as expressly averred, Defendants deny each and every allegation in  
4 paragraph 39 of the Complaint.

5                   40.     With respect to those allegations in paragraph 40 regarding California  
6 Civil Code § 54.3, Defendants aver that the text of the law speaks for itself such that no response  
7 is required. Except as expressly averred, Defendants deny each and every allegation in  
8 paragraph 40 of the Complaint.

9                   41.     Defendants deny each and every allegation in paragraph 41 of the  
10 Complaint.

11                  42.     With respect to those allegations in paragraph 42 regarding California  
12 Civil Code §§ 54 and 54.1, Defendants aver that the text of the law speaks for itself such that no  
13 response is required. Except as expressly averred, Defendants deny each and every allegation in  
14 paragraph 42 of the Complaint.

15                  43.     Answering paragraph 43 of the Complaint, Defendants admit that Plaintiff  
16 purports to intend to seek injunctive relief, damages, reasonable attorneys' fees, litigation  
17 expenses and costs but deny committing any violations that would entitle to her to any such  
18 relief. With respect to those allegations in paragraph 43 that purport to set forth legal standards  
19 and/or requirements, Defendants aver that no response is required. Except as expressly admitted,  
20 denied or averred, Defendants deny each and every allegation in paragraph 43 of the Complaint.

21                  44.     With respect to those allegations in paragraph 44 of the Complaint that  
22 purport to set forth legal standards and/or requirements, Defendants aver that the text of the law  
23 speaks for itself such that no response is required to those allegations. Except as expressly  
24 averred, Defendants deny each and every allegation in paragraph 44 of the Complaint.

25                  45.     Answering paragraph 45 of the Complaint, Defendants admit that Plaintiff  
26 purports to seek punitive damages but deny committing any violations that would entitle her to

1 such relief. Except as expressly admitted or denied, Defendants deny each and every allegation  
2 in paragraph 45 of the Complaint.

3 46. With respect to those allegations in paragraph 46 that purport to set forth  
4 legal standards/requirements, Defendants aver that no response is required. Except as expressly  
5 averred, Defendants deny each and every allegation in paragraph 46 of the Complaint.

6 47. Answering paragraph 47 of the Complaint, Defendants admit that Plaintiff  
7 purports to seek actual, statutory, treble and punitive damages, preliminary and permanent  
8 injunctive relief, and reasonable attorneys' fees but deny committing any violations that would  
9 entitle her to such relief. Except as expressly admitted or denied, Defendants deny each and  
10 every allegation in paragraph 47 of the Complaint.

11 48. Answering paragraph 48 of the Complaint, Defendants admit that Plaintiff  
12 purports to seek injunctive relief, attorneys' fees, litigation expenses and costs but deny  
13 committing any violations that would entitle her to such relief. Except as expressly admitted or  
14 denied, Defendants deny each and every allegation in paragraph 48 of the Complaint.

15 **THIRD CAUSE OF ACTION:**  
16 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990**  
**42 USC §§ 12101ff**

17 49. Defendants incorporate by reference their responses to paragraphs 1  
18 through 48 of the Complaint as if set forth here in full.

19 50. With respect to those allegations in paragraph 50 of the Complaint  
20 regarding 42 U.S.C. Section 12101, Defendants aver that the text of the law speaks for itself such  
21 that no response is required to those allegations. Except as expressly averred, Defendants deny  
22 each and every allegation in paragraph 50 of the Complaint.

23 51. With respect to those allegations in paragraph 51 of the Complaint  
24 regarding 42 U.S.C. Section 12101(b), Defendants aver that the text of the law speaks for itself  
25 such that no response is required to those allegations. Except as expressly averred, Defendants  
26 deny each and every allegation in paragraph 51 of the Complaint.

1                   52.     With respect to those allegations in paragraph 52 of the Complaint that  
 2     purport to set forth legal standards and/or requirements, Defendants aver that the text of the law  
 3     speaks for itself such that no response is required to those allegations. Except as expressly  
 4     averred, Defendants deny each and every allegation in paragraph 52 of the Complaint.

5                   53.     With respect to those allegations in paragraph 53 of the Complaint that  
 6     purport to set forth legal standards and/or requirements, Defendants aver that the text of the law  
 7     speaks for itself such that no response is required to those allegations. Except as expressly  
 8     averred, Defendants deny each and every allegation in paragraph 53 of the Complaint.

9                   54.     With respect to those allegations in paragraph 54 of the Complaint that  
 10    purport to set forth legal standards and/or requirements, Defendants aver that the text of the law  
 11    speaks for itself such that no response is required to those allegations. Except as expressly  
 12    averred, Defendants deny each and every allegation in paragraph 54 of the Complaint.

13                  55.     With respect to those allegations in paragraph 55 of the Complaint that  
 14    purport to set forth legal standards and/or requirements, Defendants aver that the text of the law  
 15    speaks for itself such that no response is required to those allegations. Except as expressly  
 16    averred, Defendants deny each and every allegation in paragraph 55 of the Complaint.

17                  56.     Answering paragraph 56 of the Complaint, Defendants aver that to the  
 18    extent the allegations in paragraph 56 purport to require a legal conclusion, no response is  
 19    required. Except as expressly averred, Defendants deny each and every allegation in  
 20    paragraph 56 of the Complaint.

21                  57.     Answering paragraph 57 of the Complaint, Defendants aver that to the  
 22    extent the allegations in paragraph 57 purport to require a legal conclusion, no response is  
 23    required. Except as expressly averred, Defendants deny each and every allegation in  
 24    paragraph 57 of the Complaint.

25                  58.     Answering paragraph 58 of the Complaint, Defendants aver that to the  
 26    extent the allegations in paragraph 58 purport to require a legal conclusion, no response is

1 required. Except as expressly averred, Defendants deny each and every allegation in  
2 paragraph 58 of the Complaint.

3           59. With respect to those allegations in paragraph 59 of the Complaint that  
4 purport to set forth legal standards and/or requirements and/or require a legal conclusion,  
5 Defendants aver that the text of the law speaks for itself such that no response is required to  
6 those allegations. Except as expressly averred, Defendants deny each and every allegation in  
7 paragraph 59 of the Complaint.

8           60. With respect to those allegations in paragraph 60 of the Complaint that  
9 purport to set forth legal standards and/or requirements, Defendants aver that the text of the law  
10 speaks for itself such that no response is required to those allegations. Except as expressly  
11 averred, Defendants deny each and every allegation in paragraph 60 of the Complaint.

12           61. Answering paragraph 61 of the Complaint, Defendants admit that Plaintiff  
13 purports to seek reasonable attorneys' fees, litigation expenses and costs but deny committing  
14 any violations that would entitle her to any such relief. With respect to those allegations in  
15 paragraph 61 of the Complaint that purport to require a legal conclusion, Defendants aver that no  
16 response is required. Except as expressly admitted, denied or averred, Defendants deny each and  
17 every allegation in paragraph 61 of the Complaint.

18                                   **FOURTH CAUSE OF ACTION:**  
19           **DAMAGES AND INJUNCTIVE RELIEF UNDER STATE LAW FOR VIOLATION OF**  
20           **TITLE III OF THE AMERICANS WITH DISABILITIES ACT**

21           62. Defendants incorporate by reference their responses to paragraphs 1  
22 through 61 of the Complaint as if set forth here in full.

23           63. With respect to those allegations in paragraph 63 of the Complaint that  
24 purport to set forth legal standards and/or requirements, Defendants aver that the text of the law  
25 speaks for itself such that no response is required to those allegations. Except as expressly  
26 admitted, denied or averred, Defendants deny each and every allegation in paragraph 63 of the  
Complaint.

1                   64.     Answering paragraph 64 of the Complaint, Defendants aver that to the  
 2 extent the allegations in paragraph 64 purport to require a legal conclusion, no response is  
 3 required. Defendants further incorporate by reference their responses to paragraphs 33 through  
 4 34 and paragraphs 45 through 46 of the Complaint as if set forth here in full. Except as expressly  
 5 averred, Defendants deny each and every allegation in paragraph 64 of the Complaint.

6                   65.     Answering paragraph 65 of the Complaint, Defendants admit that Plaintiff  
 7 purports to seek reasonable attorneys' fees, litigation expenses and costs but deny committing  
 8 any violations that would entitle her to any such relief. With respect to those allegations in  
 9 paragraph 65 of the Complaint that purport to require a legal conclusion, Defendants aver that no  
 10 response is required. Except as expressly admitted, denied or averred, Defendants deny each  
 11 and every allegation in paragraph 65 of the Complaint.

12                                   **FIFTH CAUSE OF ACTION:**  
 13                   **DAMAGES AND INJUNCTIVE RELIEF UNDER THE UNRUH CIVIL RIGHTS ACT**  
                   **FOR VIOLATION OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT**

14                   66.     Defendants incorporate by reference their responses to paragraphs 1  
 15 through 65 of the Complaint as if set forth here in full.

16                   67.     With respect to those allegations in paragraph 67 of the Complaint that  
 17 purport to set forth legal standards and/or requirements, Defendants aver that the text of the law  
 18 speaks for itself such that no response is required to those allegations. Except as expressly  
 19 admitted, denied or averred, Defendants deny each and every allegation in paragraph 67 of the  
 20 Complaint.

21                   68.     Answering paragraph 68 of the Complaint, Defendants aver that to the  
 22 extent the allegations in paragraph 68 purport to require a legal conclusion, no response is  
 23 required. Defendants further incorporate by reference their responses to paragraphs 33 through  
 24 34 and paragraphs 45 through 46 of the Complaint as if set forth here in full. Except as expressly  
 25 averred or denied, Defendants deny each and every allegation in paragraph 68 of the Complaint.

26                   69.     Answering paragraph 69 of the Complaint, Defendants admit that Plaintiff

purports to seek reasonable attorneys' fees, litigation expenses and costs but deny committing any violations that would entitle her to any such relief. With respect to those allegations in paragraph 69 of the Complaint that purport to require a legal conclusion, Defendants aver that no response is required. Except as expressly admitted, denied or averred, Defendants deny each and every allegation in paragraph 69 of the Complaint.

**SIXTH CAUSE OF ACTION:  
VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200  
UNFAIR COMPETITION THROUGH VIOLATIONS OF CALIFORNIA STATE LAW  
PROTECTING THE RIGHTS OF DISABLED PERSONS**

70. Defendants incorporate by reference its responses to paragraphs 1 through 69 of the Complaint as if set forth here in full.

71. Answering paragraph 71 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of allegations concerning the business activities of Defendant Ross Stores, Inc and on that basis deny each and every such allegation in paragraph 71. Except as expressly denied, Defendants deny each and every allegation in paragraph 71 of the Complaint.

72. Defendants deny each and every allegation in paragraph 72 of the Complaint.

73. Defendants deny each and every allegation in paragraph 73 of the Complaint.

74. Defendants deny each and every allegation in paragraph 74 of the Complaint.

75. Answering paragraph 75 of the Complaint, Defendants admit that Plaintiff purports to seek attorneys' fees but deny committing any violations that would entitle her to such relief. Except as expressly admitted or denied, Defendants deny each and every allegation in paragraph 75 of the Complaint.

76. Answering paragraph 76 of the Complaint, Defendants aver that to the

1 extent the allegations in paragraph 76 purport to require a legal conclusion, no response is  
2 required. Defendants further incorporate by reference their responses to paragraphs 33 through  
3 34 and paragraphs 45 through 46 of the Complaint as if set forth here in full. Except as expressly  
4 averred or denied, Defendants deny each and every allegation in paragraph 76 of the Complaint.

5  
6 **SEVENTH CAUSE OF ACTION:  
DECLARATORY RELIEF**

7 77. Defendants incorporate by reference their responses to paragraphs 1  
8 through 76 of the Complaint as if set forth here in full.

9 78. Defendants deny each and every allegation in paragraph 78 of the  
10 Complaint.

11 79. Defendants deny each and every allegation in paragraph 79 of the  
12 Complaint.

13  
14 **EIGHTH CAUSE OF ACTION:  
VIOLATION OF GOVERNMENT CODE SECTION 12948**

15 80. Defendants incorporate by reference their responses to paragraphs 1  
16 through 79 of the Complaint as if set forth here in full.

17 81. Defendants deny each and every allegation in paragraph 81 of the  
18 Complaint.

19 82. Answering paragraph 82 of the Complaint, Defendants are without  
20 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations  
21 regarding Plaintiff's alleged complaint to the Department of Fair Housing and Employment and  
22 on that basis deny each and every such allegation in paragraph 82. Defendants admit that any  
23 cause of action under Government Code Section 12948 is not ripe for pursuit. Except as  
24 expressly admitted or denied, Defendants deny each and every allegation in paragraph 82 of the  
25 Complaint.

26 ///

83. Answering paragraph 83 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding Plaintiff's future plans to pursue additional causes of action and on that basis deny each and every such allegation in paragraph 83. Except as expressly denied, Defendants deny each and every allegation in paragraph 83 of the Complaint.

**NINTH CAUSE OF ACTION:  
NEGLIGENCE PER SE IN INJURING PLAINTIFF DUE TO VIOLATIONS OF STATE  
AND FEDERAL LAW PROTECTING THE DISABLED, AND COMPLETE  
INDIFFERENCE TO THE CERTAIN RESULT**

84. Defendants incorporate by reference their responses to paragraphs 1 through 83 of the Complaint as if set forth here in full.

85. Defendants incorporate by reference their responses to all prayers for relief related to Plaintiff's damages as if set forth here in full. Except as expressly averred, admitted, or denied, Defendants deny each and every allegation in paragraph 85 of the Complaint.

86. Defendants deny each and every allegation in paragraph 86 of the Complaint.

87. Answering paragraph 87 of the Complaint, Defendants aver that to the extent the allegations in paragraph 87 purport to require a legal conclusion, no response is required. Defendants further incorporate by reference their responses to paragraphs 33 through 34 and paragraphs 45 through 46 of the Complaint as if set forth here in full. Except as expressly averred, admitted, or denied, Defendants deny each and every allegation in paragraph 87 of the Complaint.

**PRAYER FOR RELIEF**

88. Defendants deny that Plaintiff is entitled to any of the relief requested in her Prayer For Relief or that Defendants caused any injury or damage to Plaintiff.

///



**AFFIRMATIVE DEFENSES**

89. As an affirmative defense to each claim in Plaintiff's Complaint, Defendants allege that the Complaint does not state facts sufficient to constitute any claim against Defendants.

90. As a second affirmative defense to each claim in Plaintiff's Complaint, Defendants allege that the asserted disability access violations were corrected, were scheduled to be corrected, and/or in compliance with the applicable regulations at the time Plaintiff filed the Complaint.

91. As a third affirmative defense to each claim in Plaintiff's Complaint, Defendants allege that Plaintiff has failed to state facts sufficient to sustain an award of punitive damages or exemplary damages against Defendants.

92. As a fourth affirmative defense to each claim for which Plaintiff prays for punitive damages, Defendants allege that the standards for an award of punitive damages under state law are unconstitutionally vague under both the Fourteenth Amendment to the United States Constitution and Article 1, Section 7 of the California Constitution, in that there are no adequate standards or guides (1) for determining the type of conduct on which an award of punitive damages may be based; (2) for guiding the trier of fact in deciding whether to award punitive damages; or (3) for fixing or determining the amount of any punitive damages to be awarded. In addition, state law provides inadequate procedural safeguards for awarding punitive damages, and excessive punitive damages violate the Due Process clauses of the United States and California Constitutions.

93. As a fifth affirmative defense to the Ninth Cause of Action for Negligence and any other cause of action purporting to allege negligence, Defendants allege that if there was any negligence on their part or if any warranty existed or was breached, all of which is denied, Plaintiff's damages were solely and proximately caused by negligence and conduct of Plaintiff and/or her agents and servants. Defendants further allege that if any negligence or other conduct

1 of defendants is found to have caused or contributed to the injury and damages alleged, such  
 2 faults must be apportioned between themselves and the other parties or persons, and further that  
 3 faults of Plaintiff and each of them are so extraordinary as to cut off any liability of Defendants  
 4 therefore, and further that the negligence and fault of Plaintiff was so great as to have prevented  
 5 the operation of any warranties, if any there were.

6 94. As a sixth affirmative defense to each claim in Plaintiff's Complaint,  
 7 Defendants state that Plaintiff's Eighth Cause of Action for Violation of Government Code  
 8 Section 12948 and any other cause of action purporting to allege similar violations are barred, in  
 9 whole or in part, to the extent that they rely on allegations which were not contained in a timely  
 10 charge filed with the California Department of Fair Employment and Housing and/or the United  
 11 States Equal Employment Opportunity Commission.

12 95. As a seventh affirmative defense to each claim in Plaintiff's Complaint,  
 13 Defendants state that they currently have insufficient knowledge or information on which to  
 14 form a belief as to whether they may have additional, as yet unstated, affirmative defenses  
 15 available. Defendants reserve the right to assert additional affirmative defenses in the event  
 16 discovery indicates they would be appropriate.

17 WHEREFORE, Defendants pray:

- 18 1. That the Complaint be dismissed in its entirety;
- 19 2. That Plaintiff take nothing by this Complaint;
- 20 3. That judgment be entered in favor of Defendants;
- 21 4. That Defendants be awarded costs and attorneys' fees; and
- 22 5. That the Court provides such further relief to Defendants as it deems proper.

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1 DATED: September 23, 2002

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3 BINGHAM McCUTCHEN LLP

4  
5 By: /s/ Randall S. Hegarty  
6 Randall S. Hegarty  
7 Attorneys for Defendants  
8 M & H Realty Partners IV LP  
9 MHRP IV L.P.  
10 Merlone/Hagenbuch IV  
11  
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DEFENDANTS M&H REALTY PARTNERS, ET AL.'S ANSWER TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES (C02-2567 VRW)

PROOF OF SERVICE

I am over 18 years of age, not a party to this action and employed in the County of San Francisco, California at Three Embarcadero Center, San Francisco, California 94111-4067. I am readily familiar with the practice of this office for collection and processing of correspondence for mailing with the United States Postal Service and correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

Today I served the attached:

**DEFENDANTS M&H REALTY PARTNERS IV LP, MHRP  
IV L.P., AND MERLONE/HAGENBUCH IV, INC.'S  
ANSWER TO PLAINTIFF'S FIRST AMENDED  
COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES**

by causing a true and correct copy of the above to be placed in the United States Mail at San Francisco, California in sealed envelope(s) with postage prepaid, addressed as follows:

Timothy S. Thimesch  
Michelle L. Thimesch  
Thimesch Law Offices  
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Dean A. Alper, Esq.  
Alper & McCulloch  
425 California Street, 18th Floor  
San Francisco, CA 94104-2203

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 23, 2002.

/s/ Ericka C. Johnson  
Ericka C. Johnson